



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JAN 12 2016

Mr. Donald E. Berger, Jr.
Township of Springfield
Township Manager
1510 Paper Mill Road
Wyndmoor, PA 19038-7032

Dear Mr. Berger:

This letter is in response to your request, made during a teleconference on September 29, 2015, to the U.S. Environmental Protection Agency (EPA) concerning the Tank Car Corporation of America (TCCA) property located at 1725 Walnut Avenue, Oreland, Springfield Township, Montgomery County, Pennsylvania (the Property). The Tax Parcel Number for the Property as recorded in Montgomery County is 52-00-17821-001. EPA understands that a Declaration of Taking concerning the Property was filed by Springfield Township in the Montgomery County Court of Common Pleas pursuant to Chapter 3, Section 302 of the Pennsylvania Eminent Domain Code, 26 Pa. C.S. § 302 on October 30, 2015.

Because Springfield Township (Township) has filed a Declaration of Taking to acquire the Property by condemnation, and because the EPA has performed removal activities at the Property, the Township has requested a Superfund comfort/status letter from the EPA. The purpose of this comfort/status letter is to provide you with information the EPA has about the Property and potentially applicable federal Superfund statutory and regulatory provisions and Agency policies, as of the date of this letter. I hope the information in this letter enables you to make informed decisions as you move forward with acquisition of the Property.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the EPA's mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated lands. In doing so, it is the Agency's priority to facilitate appropriate use of such lands. The EPA is issuing this letter consistent with the EPA's current guidance.¹

Property Status

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded by the EPA in the Superfund Enterprise Management System (SEMS), which may be accessed at

¹ The Property is currently used by TCCA for leasing purposes. As described below, Springfield Township wishes to acquire the land for use as a public park. The EPA does not take a position with respect to future use of the Property so long as the protections put in place by the EPA as a result of its response actions are maintained.

<http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a public access database that contains non-enforcement confidential information about sites where there has been some EPA involvement under Superfund.

The Property is part of the Tank Car Corporation of America Site (Site). This Site is located in SEMS but is not on the Superfund National Priorities List (NPL). The EPA is currently assessing whether the Property should be proposed for inclusion on the NPL.

History and Status of the Site

The Property is located in a mixed industrial and residential area and is generally bounded to the west by Oreland Mill Road, to the south and east by Walnut Avenue and residential homes, and to the north by railroad tracks. The Property consists of approximately 7.89 acres. From approximately 1921 until 2001, TCCA owned and operated a facility at the Property to repair or maintain railroad tank cars. Operations at the facility included the rebuilding, repair, alteration, and conversion of rail cars; major and minor fabrication and welded repairs to tanks; and sandblasting and painting of railroad cars. TCCA's former industrial operations at the facility produced hazardous wastes and liquids containing hazardous substances that were placed in a lagoon, and later into buried tanker cars, at the Property. In addition, sandblasting grit containing lead was used and disposed of at the Property. When TCCA ceased operations in 2001, the lagoon, tanker cars, and sandblast grit were left in place on the Property.

The EPA initiated a Superfund removal site evaluation at the Site on or about April 10, 2006. At the time, TCCA was attempting to sell the Property. Based on that evaluation, which included review of information obtained from local authorities and a prospective purchaser, the EPA selected a Removal Action. This action included the identification of above- and below-ground tanks; securing tank openings and piping systems to prevent releases of hazardous substances; and sampling, characterizing, removing, and disposing off-Site liquids in the tanks. The EPA's investigation of environmental conditions at the Site continued throughout its work and the Removal Action was modified several times to include such actions as:

- Removal and off-Site disposal of liquids from piping systems, the removal of tanks to facilitate the removal of contaminated soils, and removal and off-Site disposal of visually contaminated soils.
- Implementation of temporary erosion and sedimentation controls to control storm water through the Site and to minimize migration from the Property.
- Removal, and consolidation onto the Property, of sandblast grit containing hazardous substances from the residential properties adjacent to the Property as well as on the Property itself.
- Removal, and temporarily storage of, shallow underground water to facilitate removal of the black tarry material from the lagoon area.
- Removal and off-Site disposal of the black tarry material and affected soils from the lagoon area.
- Construction of a cover atop the consolidated sandblast materials.
- Installation of permanent erosion and sedimentation controls to minimize future migration of hazardous substances from the Site.
- Placement of signage identifying the location and characteristics of hazardous substances remaining at the Site.

- Demolition of the paint shed on the northern boundary of the Property and off-Site disposal of the debris.
- Demolition of the sandblast shed on the Property and off-Site disposal of the debris.
- Exterior cleaning of nearby structures and equipment on neighboring properties and installation of vegetation around the Property perimeter.

Chemicals, including those regarded as hazardous substances under the Superfund law, were found in various media and locations during performance of the work. Such chemicals included the following (boldfaced chemicals are hazardous substances under the Superfund law):

Contained In	Substances
Burled Tanker Cars (oils, sludges, and black tarry material)	Benzene; Ethylbenzene; Toluene; Xylene; Trichloroethene; 1,1-dichloroethene; Vinyl chloride; Lead; Styrene; Isopropylbenzene; Phenol; 2-methylphenol; 4-methylphenol; 2,4-dimethylphenol; Naphthalene; 2-methylnaphthalene; 1,1-biphenyl; Acenaphthalene; Accenaphthene; Dibenzofuran; Fluorene; Phenanthrene; Anthracene; Carbazole; Fluoranthene; Pyrene; Chrysene; Benzo(a)anthracene; Benzo(a)pyrene; Dibenzothiophene; Heptachlor; Dieldrin; Endrin; DDD; DDT; Chlordane; Endrin ketone; Endrin Aldehyde
Soil	Arsenic; Beryllium; Lead; Manganese; Zinc; Nickel; Copper; Naphthalene; Dibenzofuran; Benzo(a)anthracene; Benzo(a)pyrene; DEHP; Phenol; Benzene; Ethylbenzene; Toluene; Xylene; Styrene; Isopropylbenzene; 2-methylphenol; 4-methylphenol; 2,4-dimethylphenol; Naphthalene; 2-methylnaphthalene; 1,1-biphenyl; Acenaphthalene; Accenaphthene; Dibenzofuran; Fluorene; Phenanthrene; Anthracene; Carbazole; Fluoranthene; Pyrene; Chrysene; Heptachlor; DDD; DDT; Chlordane; 2,4-D; 1,2-DCE; TCE; PCE
Shallow/Perched Groundwater	Arsenic; Beryllium; Lead; manganese; Zinc; Nickel; Copper; Naphthalene; Dibenzofuran; Benzo(a)anthracene; Benzo(a)pyrene; DEHP; Phenol; Benzene; Trichloroethene; Dichloroethene; Toluene; Styrene; Dichlorobenzene
Groundwater	Arsenic; Beryllium; Manganese; Zinc; Nickel; Naphthalene; Dibenzofuran; DEHP; Benzene
Surface Water	Arsenic; Beryllium; Lead; Manganese; Zinc; Nickel; Copper

Major activities associated with the Removal Action were completed in May 2011. During the course of the Removal Action, the EPA removed and disposed of off-Site:

- Over 35,000 gallons of hazardous waste liquids.
- Over 22,000 gallons of non-hazardous waste liquids.
- Over 600 tons of hazardous waste solids.
- Over 18,000 tons of non-hazardous solids.
- 760 gallons of waste fuel.
- Approximately 700 tons of non-hazardous construction debris.
- Over 200 tons of non-hazardous soil.

Notwithstanding the removal of the above-described materials from the Property, the EPA left contaminated soils and sandblast grit consolidated from the Property and surrounding parcels beneath a cover constructed to eliminate further migration of such material and to prevent contact by humans and animals. The cover is approximately two feet in thickness and consists of a layer of clay topped with

modified stone (gravel). The location of the cover is identified in Attachment 1, as indicated by the yellow area marked as "buried sand."

Reuse of the Property

In the completed EPA Comfort Letter Questionnaire, which the Township emailed to the EPA on October 13, 2015, the Township wrote that it plans to convert the Property into a public park with open space and playing fields. The Township wrote that it has no affiliation with the current owner of the Property (understood to be TCCA) or any other potentially responsible parties, except to the extent that such parties do business in or reside in the Township. The Township indicated that it does not plan to rent the Property if and when it acquires the Property. In addition, the Township wrote that it had recently communicated with representatives from the Pennsylvania Department of Environmental Protection (PADEP) about taking the Property through Pennsylvania's Act 2 Voluntary Cleanup Program and that the Township planned to meet with PADEP staff and counsel (the Township advises that such meeting has occurred). The Township further noted that activities conducted in connection with the Property include typical pre-acquisition due diligence activities, including the completion of a Phase I Environmental Site Assessment in accordance with the "All Appropriate Inquiries" requirements set forth at 40 C.F.R. Part 312.²

It is important to note that any use or development should be compatible with any EPA cleanup actions. For example, a party should not conduct any activities or construct any structures that would interfere with the EPA's investigation or cleanup. Based on the facts presently known to the EPA, the Agency has not identified any obvious incompatibility between the proposed use of the Property and the cleanup remedy so long as certain steps are taken to maintain the integrity of the EPA's Removal Action (see below). As your plans develop further, you should continue to discuss your plans with the EPA, as well as consult with your own legal counsel and environmental professional.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

CERCLA was amended in 2002 to allow certain parties who acquire contaminated or potentially contaminated properties to acquire such properties and to avoid potential CERCLA liability if they qualify as a "bona fide prospective purchaser" (BFPP). The BFPP provision provides that a person meeting the criteria of CERCLA Sections 101(40) and 107(r)(1) and who acquires after January 11, 2002, will not be liable as an owner or operator under CERCLA. The BFPP provision is designed to be self-implementing, meaning the acquiring party is responsible for achieving and maintaining BFPP status.

To assist persons acquiring land upon which the EPA has performed a Superfund response, the EPA has issued guidance regarding some of the criteria landowners must meet in order to qualify for the BFPP protections under CERCLA. See *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability (Common Elements)* (Mar. 6, 2003) (Common Elements Guidance) (see Attachment 2). CERCLA requires a party to perform "all appropriate inquiries" (AAI), prior to acquiring real property, in order to qualify for BFPP protection. There are other BFPP requirements such as providing certain notices, taking "reasonable steps," providing cooperation,

² EPA has made no determination regarding the adequacy of the Phase I Environmental Assessment under the regulations.

assistance, and access, and complying with institutional controls. Please note that there are additional criteria addressed in CERCLA Sections 101(40) and 107(r)(1) that a landowner must meet in order to qualify as a BFPP under CERCLA. You and your legal counsel will need to assess whether you satisfy each of the statutory requirements necessary to achieve BFPP status and continue to meet the applicable criteria.

Among other criteria outlined in the law and the Common Elements Guidance, a BFPP must take "reasonable steps" related to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases as required by CERCLA Section 101(40)(D). As noted above, the EPA has performed a Removal Action at the Site that has resulted in the consolidation of hazardous substances beneath a cover. Based on the information the EPA has evaluated to date, the EPA believes that the following would be appropriate "reasonable steps" related to the hazardous substance contamination found at the Site:

1. Maintain the integrity of the EPA-constructed cover on the Property to prevent the release of, or exposure to, the contaminated soils and sands beneath the cover;
2. Do not decrease the thickness of the cover (it may, however, be increased);
3. Paving the capped area would be acceptable to the EPA as it would provide an additional layer of protection, provided the paving operation does not impact the cover's integrity;
4. Maintenance should be performed on the covered area commensurate with use of the area, weather conditions, etc. For example, if rain causes some of the cover to erode, additional material should be put in place and measures taken to prevent reoccurrence;
5. Before any work is undertaken within the covered area that may impact the integrity of the cover, notify the EPA and PADEP in writing of the work to be undertaken and the steps to be used in ensuring that there will be no releases and that human, environmental, and natural resource exposure to contaminants beneath the cover will be avoided;
6. Maintain the existing signage notifying users of the Property that digging in the covered area is prohibited.

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination known to the EPA at this time and are provided solely for informational purposes. If additional information regarding the nature and extent of hazardous substance contamination at the Site and/or Property becomes available, additional actions may be necessary to satisfy the reasonable steps criterion. You should ensure that you are aware of the condition of the Property so that you are able to take reasonable steps with respect to any hazardous substance contamination. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken.³

Superfund Lien Pursuant to CERCLA § 107(l)

A Superfund lien has arisen on the Property pursuant to Section 107(l) of CERCLA. The EPA has filed a notice of its Superfund lien on the Property and is currently discussing resolution of TCCA's liability with the company.

³ This section describes CERCLA's BFPP provisions only and does not cover other defenses or immunities that may be available under the Superfund law. The EPA has previously discussed CERCLA's third-party defenses and the "involuntary acquisition" exception on several occasions with the Township.

Windfall Lien Pursuant to CERCLA § 107(r)

To the extent the EPA's response action increases the fair market value of a property, the EPA may have a windfall lien against that property under CERCLA § 107(r). The windfall lien is limited to the increase in fair market value attributable to the EPA's response action, capped by the EPA's unrecovered response costs.

On July 16, 2003, the EPA issued a policy titled the, "EPA Interim Enforcement Discretion Policy Concerning 'Windfall Liens' Under Section 107(r) of CERCLA" ("Windfall Lien Policy"). This policy provides that the EPA, in an exercise of its enforcement discretion, will generally not assert a Section 107(r) windfall lien when the conditions and criteria described in the Windfall Lien Policy for not asserting a windfall lien are met. The EPA has not asserted a windfall lien under Section 107(r) of CERCLA on this Property. In accordance with EPA policy, the EPA will generally not assert a windfall lien where a bona fide prospective purchaser acquires a property for the creation or preservation of a public park or similar public purpose.

Conclusion

The EPA generally issues Superfund comfort/status letters to facilitate the cleanup and reuse of contaminated or formerly contaminated properties. This comfort/status letter is intended to help you make informed decisions by providing you with the Superfund information that the EPA has about the Property and by identifying the CERCLA statutory protections, guidance, resources, and tools that may be potentially available for the Property.

This letter is not intended to limit or affect the EPA's authority under CERCLA or any other law or to provide a release from CERCLA liability. The EPA encourages you to consult with legal counsel, an environmental professional, and the appropriate state or local environmental protection agency before taking any action to acquire, clean up, or reuse potentially contaminated property. It is your responsibility to ensure that the proposed use of the Property complies with any federal, state, and/or local laws or requirements that may apply.

The EPA supports appropriate reuse of contaminated properties and hopes the information in this letter is useful to you. If you have any additional questions or wish to discuss this information further, please feel free to contact Christopher P. Thomas of my staff, at (215) 814 -5555, or have your attorney contact Andrew Goldman, Senior Regional Counsel, at (215) 814-2487.

Sincerely,



Karen Melvin, Acting Director
Hazardous Site Cleanup Division

Attachments

cc: M. Gross, Post & Schell, P.C.

Attachment 1

